

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

TERRY A. WILLIAMS, a minor by
and through SANDRA RANKIN, paternal
grandmother and Guardian ad Litem,

Plaintiff,

v.

No. CIV-02-996 WJ/LFG

DEBORAH HARTZ; MARJORIE TAFOYA;
DAVID PECOTTE; ANGUS MACKILLOP;
SUSAN ZELLHOEFER; and any unknown
JOHN DOES and JANE R. ROES,

Defendants.

MEMORANDUM OPINION AND ORDER DENYING
PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT

THIS MATTER comes before the Court pursuant to Plaintiff's Motion for Entry of Default Judgment [Docket No. 13]. The motion requests default judgment against Defendant Angus Mackillop. The record contains a Clerk's Entry of Default. [Docket No. 14]. Having reviewed the record in the case, I find that Plaintiff is not entitled to default judgment and the motion will therefore be denied.

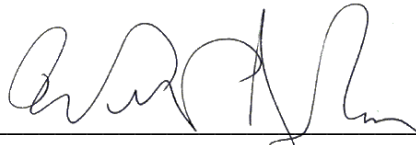
In order for the Court to enter default judgment against any Defendant, it must find that the defendant was properly served in accordance with the Federal Rules of Civil Procedure and subsequently failed to answer, defend, or otherwise appear in the case within the time provided in the Rules.

Pursuant to Fed. R. Civ. P. 4(e), service on the individual defendant Angus Mackillop would be permitted by serving him in accordance with the law of the State of New Mexico, by

delivering process to him personally, by delivering process to his dwelling or usual place of abode, or by delivering process to his agent. The return of summons filed in this case shows that service of process on Angus Mackillop was attempted by delivering process to Mr. Mackillop's supervisor at Mr. Mackillop's place of work. Such service is not one of the permissible methods under Fed. R. Civ. P 4(e). Therefore, Plaintiff is not entitled to an entry of default judgment against Defendant Angus Mackillop.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Entry of Default Judgment [Docket No. 13] is hereby DENIED.

IT IS FURTHER ORDERED that the Clerk's Entry of Default [Docket No. 14] is hereby SET ASIDE.



UNITED STATES DISTRICT JUDGE